

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1140 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

HEIRS OF DECEASED DIWALIBEN WD/O VALLABHBHAI LALBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1140 of 2003
MR DHIRENDRA MEHTA for Petitioner No. 1-3
Mr. KD Pandya, AGP for Respondent No. 1-2
DELETED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 14/07/2004

ORAL JUDGEMENT

In this petition under Article 227 of the Constitution of India, the petitioners have challenged the judgment and order dated 19.7.2002 passed by the Gujarat Revenue Tribunal in Revision Application No. TEN.B.S. 41/92 in dismissing the same and confirming the judgment and order dated 27.9.1991 passed by the Deputy

Collector, Navsari in Ceiling Appeal No. 16 of 1991 and also in confirming the order passed by the Mamlatdar & ALT (Ceiling), Navsari dated 13th March 1991 in Ceiling Case No. 460 of 1989 by which all the authorities below have declared 19 acres and 30 gunthas of land as surplus land under the provisions of the Gujarat Agricultural Land Ceiling Act, 1960 (hereinafter referred to as 'the Act').

2. Vallabhbhai Lalbhai, the original land-owner was holding in all 49 acres and 30 gunthas of land. That the said land owner submitted necessary declaration required under the Act and proceedings were initiated by the Mamlatdar & ALT, Navsari who by his judgment and order dated 22.6.1982 held that he is not holding any surplus land under the provisions of the Act. The said order dated 22.6.1982 passed by the Mamlatdar and ALT, Navsari, came to be reviewed by the Deputy Collector (Land Reforms), Valsad, and by judgment and order dated 30th July 1984 quashed and set aside the order passed by the Mamlatdar & ALT, Navsari, dated 22.6.1982. Considering the holding of the original land-owner as 66 acres and 35 gunthas of land, giving one unit, i.e. 30 acres of land declared 36 acres and 35 gunthas of land as surplus land and directed the Mamlatdar & ALT to proceed further under Section 20 of the Act and to give choice to the original-land owner. That the said order passed by the Deputy Collector, Valsad dated 30th July 1984 came to be challenged by the heirs of late Diwaliben Vallabhbhai, wife of original land owner before the Gujarat Revenue Tribunal. The Gujarat Revenue Tribunal by its judgment and order passed in Revision Application No. TEN.B.S. 292/94 allowed the said revision application by quashing and setting aside the judgment and order dated 30th July 1984 passed by the Deputy Collector, Valsad and remanded the matter to the Mamlatdar for fresh decision after giving opportunity to the revisionist.

3. That thereafter on remand, the Mamlatdar and ALT, by his judgment and order dated 13th March 1991 held that the holding of the original owner would be 49 acres and 30 gunthas of land and giving one unit declared 19 acres and 30 gunthas of land as excess land. Being aggrieved and dissatisfied with the order passed by the Mamlatdar and ALT (Ceiling), Navsari, dated 13th March 1991 in declaring 19 acres and 30 gunthas of land as excess land, the petitioners preferred appeal before the Deputy Collector, Navsari. The Deputy Collector, Navsari, also by his judgment and order dated 9.12.1991 dismissed the appeals preferred by the petitioners being Ceiling Appeals No. 16 of 1991 and 17 of 1991 confirming the

order passed by the Mamlatdar and ALT dated 3.3.1991.

3.1. Being aggrieved and dissatisfied with the judgment and order passed by the Deputy Collector, Navsari, dated 27.9.1991, the petitioners preferred Revision Application No. TEN.B.S. 14/92. The Gujarat Revenue Tribunal by its judgment and order dated 19th July 2002 dismissed the said revision application and confirmed the order passed by both the authorities below by which the land admeasuring 19 acres and 30 gunthas of land was declared as surplus land.

4. Being aggrieved and dissatisfied with the judgment and order passed by the Gujarat Revenue Tribunal dated 19th July 2002 in Revision Application No. TEN.BS 41/92 in dismissing the same and confirming the order passed by both the authorities declaring 19 acres and 30 gunthas as excess vacant land, the petitioners have preferred the present Special Civil Application under Article 227 of the Constitution of India.

5. Shri Dharendra Mehta, learned advocate appearing on behalf of the petitioners, had assailed the judgment and order passed by all the authorities below mainly on two grounds. Firstly, the portion of the land more particularly the land admeasuring 11 acres and 27 gunthas of land were transferred by way of Will dated 28.2.1975 executed by Vallabhbhai Lalbhai who died on 28.3.1975 in favour of Amrutbhai Prabhubhai, Amthabhai Prabhubhai and Nathubhai Kanjibhai. He has also assailed the judgment and order passed by all the authorities below on the ground that all the authorities below have not considered the unit of petitioners No. 1/1 to 1/4 who were daughters of deceased Diwaliben and Vallabhbhai Lalbhai. No other point has been argued by Shri Dharendra Mehta. On the other hand, Shri Pandya, the learned AGP appearing on behalf of the respondents had tried to support the judgment and order passed by all the authorities below. He has submitted that all the authorities below have concurrently found and declared 19 acres and 30 gunthas of land as surplus land. He has submitted that there is no illegality committed by any of the authorities below. He has further submitted that so far as transfer by Will is concerned, it is after the year 1971 more particularly in the year 1975 and as transfer was between 1971 and 1976 the declaration under Section 8 was required to be filed and as declaration was not submitted the said land which was transferred by Will was required to be considered in the holding of the original land-owner. Under the circumstances, there is no substance in the argument of the petitioners.

6. Heard the learned advocates appearing for the parties. So far as the question of Will and transfer of certain portion of land by Will is concerned assuming certain parcel of land was transferred by way of Will, then also in view of the fact that the executant of the Will namely Vallabhbhai Lalbhai died on 28th March 1975 the deemed transfer by way of Will was on 28th March 1975, i.e., after the prescribed year 1971 and prior to 1976. If any of the land is transferred between 1971 and 1976, then the declarant was required to file a declaration under Section 8 of the Act. In absence of any declaration under Section 8 the land in question which was transferred by way of Will was required to be considered in the holding of the land owner. In the present case, the declaration under Section 8 of the Act was not filed. Under the circumstances, assuming that some portion of the land was transferred by way of Will, then also in absence of the declaration under Section 8 of the Act the parcel of the land which was transferred by way of Will was required to be considered in the holding of the original land-owner. This aspect has been considered elaborately by the Gujarat Revenue Tribunal in its judgment and has held that transfer by Will was there. In view of the aforesaid facts, the said land was required to be considered in the holding of the original land-owner. There is, therefore, no illegality committed by the Gujarat Revenue Tribunal and/or any other lower authorities, considering the fact that the land which was transferred by way of Will to the holding of original land-owner which transferred was effected in the year 1975, after the year 1971.

7. So far as the contention raised on behalf of the petitioners that all the authorities below have materially erred in not considering the unit of the daughters is concerned, the same is required to be rejected outright. At the time when the declaration was submitted, all the daughters were married daughters. Under the provisions of Section 6, a married daughter was not required to be given any separate unit. This aspect has also been considered by the Gujarat Revenue Tribunal in its judgment. Under the circumstances, when the daughters were married daughters at the time when the declaration was filed, there was no question of giving any separate unit to them and which is rightly not given to them. In view of the matter, there is no illegality committed by any of the authorities in not considering units to the daughters who were married at the relevant time. Considering the aforesaid facts and circumstances of the case, the present Special Civil Application is

required to be dismissed as having no merits.
Accordingly, it is dismissed. Notice is discharged.
Ad-interim relief granted earlier stands vacated
forthwith.

[M.R. Shah, J.]

rmr.